

REMARKS

The Examiner notes that claim 1 is directed to a peptide of SEQ ID NO:1 or a variant thereof. Based on this recitation, the Examiner has newly required an election of species under 35 U.S.C.§121 to a single disclosed species. The Examiner further states that "upon allowance of a generic claim, applicant will be entitled to consideration of claims to additional species...."

Applicants elect the peptide of SEQ ID NO:1. Applicants strongly traverse this election of species as being improper and withdrawal thereof is respectfully requested.

Claim 1, as currently pending, is directed to:

A composition comprising immunosuppressants, cyclosporins, FK506, or rapamycin and at least one bioactive peptide comprising the high-affinity binding/anti-lymphoproliferative site of interferons α , β , ω , τ , or recombinant proteins carrying one or more of the sequences, wherein said bioactive peptide comprises one or more of the sequences of SEQ ID NO: 1 or a variant thereof that is SEQ ID NO: 2, such that at up to three amino acids of SEQ ID NO: 1 are substituted, for the aim of amplification of immunosuppressants' activities to decrease their therapeutic dose, and as the consequence to avoid their undesirable side effects during organ and tissue transplantation.

The subject matter upon which the Examiner bases the election of species was incorporated into claim 1 from claim 5. Claim 5 was added to the specification with the Amendment of May 25, 2001. As such, the subject matter upon which the Examiner newly requires an election of species has been under examination for 3 ½ years. In addition, this is the third restriction of the claims that Applicants have been subject to in as many years.

Indeed, the restriction requirement of October 12, 2001, also contained an election of species requirement that required an election of species for SEQ ID NO:1 and SEQ ID NO:2. However, upon consideration of Applicants' remarks of November 13, 2001, the Examiner withdraw the election of species of SEQ ID NOS:1 and 2 and in the Office Action of January 29, 2002, the Examiner explicitly stated that "the prior art search has been extended to include SEQ ID NO:2." The M.P.E.P. is clear that "Piecemeal examination should be avoided as much as possible." M.P.E.P. §707.07(g).

The current election of species is the epitome of piecemeal prosecution. Applicants have already addressed and overcome this issue with the election of species of October 12, 2001 and response of November 13, 2001. As such, it is improper to raise this issue again, particularly since the subject matter which is subject to

election has been before the current examiner through at least three office actions.

The present election is further improper because the bioactive peptides of claim 1 are all variants of α -peptiferon that were obtained by screening interferons from different species. See page 8, lines 22-29. Applicants do not believe the species encompassed by SEQ ID NOS:1 and 2 is an unreasonable number for the Examiner to search and exam. As such, withdrawal of the election of species is respectfully requested.

Should the Examiner not withdraw the election of species, Applicants elect, with strong traverse, SEQ ID NO:1 (as encompassed by claims 1, 4-5 and 19).

Upon examination of the species of SEQ ID NO:1, rejoinder of the remaining species, which do not create an undue burden, is respectfully requested.

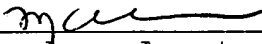
If there are any questions regarding the present application, the Examiner is requested to please contact, MaryAnne Armstrong, PhD (Reg. No. 40,069), in the Washington D.C. area at (703) 205-8000.

Application No. 09/424,080

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By 
MaryAnne Armstrong, PhD #40,069

MAA/csm
0933-0149P

P.O. Box 747
Falls Church, VA 22040-0747
(703) 205-8000